



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2019-0765]**

**RIN 1625-AA00**

### **Safety Zones; Waterway Training Areas, Captain of the Port Maryland-National Capital Region Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to establish four safety zones for certain waters of the Patapsco River, Chesapeake Bay, and Potomac River. This action is necessary to provide for the safety of life on these navigable waters at Baltimore Harbor Anchorage No. 5, between Belvidere Shoal and Kent Island, MD, between Point Lookout, MD, and St. George Island, MD, and between Possum Point, VA, and Cockpit Point, VA, during non-lethal signaling and warning device training conducted from on board U.S. Coast Guard vessels. This proposed rulemaking would prohibit persons and vessels from being in the safety zones unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE

FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2019-0765 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410-576-2674, email [Ronald.L.Houck@uscg.mil](mailto:Ronald.L.Houck@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DOD	Department of Defense
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NM	Nautical mile
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background, Purpose, and Legal Basis**

The U.S. Coast Guard uses the LA51, a non-lethal signaling and warning device, to support the service’s ports, waterways and coastal security mission. Coast Guard personnel use the LA51 device as a warning signal during enforcement operations for getting the attention of non-responsive vessels. The LA51 is a two-part (flash bang) ammunition round fired from a 12-gauge military shotgun to produce a visible signal at a range of 100 meters. The explosive pyrotechnic flash is a bright, white light lasting less

than one second with a loud report (170 decibels at the source). To maintain ports, waterways and coastal security mission readiness, Coast Guard personnel within the Maryland-National Capital Region COTP Zone (the “Maryland-National Capital Region”) must conduct LA51 device training shoreward of the 12 nautical miles (NM) baseline. At the present time, Coast Guard Stations within the Maryland-National Capital Region use the DOD firing range located in the Chesapeake Bay in the vicinity of Chesapeake Beach, MD, described at 33 CFR 334.170) (DOD Chesapeake Beach firing range) for LA51 training. But, the Maryland-National Capital Region needs additional LA51 training locations.

While the Coast Guard uses DOD-established and controlled water ranges for LA51 training when reasonably feasible, there are no DOD ranges other than the Chesapeake Bay zone within the Maryland-National Capital Region that are feasible for the Coast Guard to use for LA51 training. While other DOD ranges exist within the Maryland-National Capital Region, DOD has been unable to accommodate USCG’s requests to utilize these ranges for LA 51 training. And, currently within the Maryland-National Capital Region there are no existing Coast Guard-designated waterway training areas. The lack of alternative feasible DOD ranges or Coast Guard waterway training areas within the Maryland-National Capital Region poses significant logistical challenges and requires some Coast Guard Station personnel to travel considerable distances to the DOD Chesapeake Beach firing range. Given that the training must occur during favorable weather conditions, the long distance to the range adds additional logistical burdens to holding these trainings. To better accommodate these training needs the

COTP Maryland-National Capital Region is proposing to establish four safety zones for use as waterway training areas.

Although the LA51 has a low risk of significant injury, hazards from LA51 device training events include risks of injury or death resulting from near or actual contact among training vessels and waterway users. These risks may arise if normal vessel traffic were to interfere with the training event, and training vessels operating near designated navigation channels, as well as operating near approaches to local public boat ramps, private marinas and yacht clubs, and waterfront businesses. The COTP Maryland-National Capital Region has determined that potential hazards associated with the LA51 device trainings would be a safety concern for anyone within the waterway training areas. The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within the waterway training areas before, during, and after the training events. The proposed safety zone waterway training areas would only be used to conduct LA51 device training as needed for Coast Guard Law Enforcement training requirements.

The COTP Maryland-National Capital Region would only activate the relevant safety zone(s) as needed. If the proposed safety zones were established, the Coast Guard would continue to first seek to use a DOD-controlled range, and check its availability for LA51 device training use, prior to activating a Coast Guard waterway training area safety zone. If these permanent Coast Guard waterway training area safety zones were not established, the COTP Maryland-National Capital Region would possibly need to establish multiple temporarily safety zones for LA51 training.

The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### **III. Discussion of Proposed Rule**

The COTP Maryland-National Capital Region is proposing to establish four safety zones for use as waterway training areas.

Waterway training area Alpha includes all waters of the Patapsco River encompassed by a line connecting the following points beginning at 39°14'07.98" N, 076°32'58.50" W; thence to 39°13'34.98" N, 076°32'24.00" W; thence to 39°13'22.50" N, 076°32'28.98" W; thence to 39°13'21.00" N, 076°33'12.00" W; and back to the beginning point. Waterway training area Alpha is located at the entrance to Curtis Bay, in Baltimore Harbor Anchorage No. 5, at Baltimore, MD. The safety zone is a trapezoid in shape measuring approximately 1,500 yards in length and averaging 750 yards in width.

Waterway training area Bravo includes all waters of the Chesapeake Bay encompassed by a line connecting the following points beginning at 39°05'25.98" N, 076°20'20.04" W; thence to 39°04'40.02" N, 076°19'28.98" W; thence to 39°02'45.00" N, 076°22'09.00" W; thence to 39°03'30.00" N, 076°23'00.00" W; and back to the beginning point. Waterway training area Bravo is located in the approaches to Baltimore Harbor, between Belvidere Shoal and Kent Island, MD. The safety zone is a rectangle in shape situated along a northeast-southwest axis, measuring approximately 4,500 yards in length by 1,500 yards in width.

Waterway training area Charlie includes all waters of the Potomac River encompassed by a line connecting the following points beginning at 38°00'28.80" N, 076°22'43.80" W; thence to 38°01'18.00" N, 076°21'54.00" W; thence to 38°05'06.00" N, 076°27'43.20" W; thence to 38°04'40.20" N, 076°28'34.20" W; and back to the beginning point. Waterway training area Charlie is located between Point Lookout, MD,

and St. George Island, MD. The safety zone is a rectangle in shape measuring approximately 12,500 yards in length by 1,500 yards in width.

Waterway training area Delta includes all waters of the Potomac River encompassed by a line connecting the following points beginning at 38°32'31.14" N, 077°15'29.82" W; thence to 38°32'48.18" N, 077°15'54.24" W; thence to 38°33'34.56" N, 077°15'07.20" W; thence to 38°33'15.06" N, 077°14'39.54" W; and back to the beginning point. Waterway training area Delta is located between Possum Point, VA, and Cockpit Point, VA. The safety zone is a trapezoid in shape measuring approximately 2,000 in length by 1,000 yards in width.

Proposed waterway training areas Alpha and Bravo are located outside designated navigation channels. Neither of these two zones are near areas of the Patapsco River and Chesapeake Bay that are used heavily by the boating public or popular fishing or diving sites. Proposed waterway training areas Charlie and Delta are located within a portion of navigable channels. Although these two zones are near areas of the Potomac River that may be used by the boating public or popular fishing or diving sites, vessels traffic in these areas would be able to safely transit around the safety zones. The Coast Guard would ensure that appropriate monitoring of the waterway while the safety zone is activated.

The Coast Guard anticipates that each of the four proposed safety zones would be activated for two hours on six separate occasions annually—a total of 12 annual enforcement hours for each zone. The Coast Guard anticipates that it would activate the zones at various times of the year during daylight hours only. Whenever a LA51 device training event is planned, the COTP Maryland-National Capital Region would notify the

maritime community of the enforcement dates and times of the appropriate safety zone as the training event dictates. Such notification would be made by broadcast or local notice to mariners, distribution in leaflet form, on-scene oral notice, or other appropriate means in accordance with § 165.7.

The duration and enforcement of the zones is intended to ensure the safety of vessels and these navigable waters before, during, and after these training events. Except for training participants, no vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP Maryland-National Capital Region or a designated representative. The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, duration, and location of the safety zones. It is anticipated that each of these four safety zones will be activated for six separate events annually. Although vessel traffic may not be able to safely transit around two of these safety zones while being enforced, both of which are on the Potomac River, the impact would be for 2 hours or less and such vessels would be able to seek permission to enter and transit these safety zones by contacting the COTP Maryland-National Capital Region or a designated representative by telephone or on VHF-FM channel 16. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via Marine Band Radio VHF-FM channel 16 about the zone.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies



and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this

proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves five safety zones that, when activated, will last 48 enforcement hours annually and prohibit entry within portions of the Patapsco River, Chesapeake Bay, and Potomac River. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from

this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in the docket, and all

public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.516 to read as follows:

§ 165.516 Safety Zones; Waterway Training Areas, Captain of the Port Maryland-National Capital Region Zone.

- (a) *Regulated areas.* The following areas are established as safety zones:

- (1) *Waterway training area Alpha.* All waters of the Patapsco River, encompassed by a line connecting the following points beginning at 39°14'07.98" N, 076°32'58.50" W; thence to 39°13'34.98" N, 076°32'24.00" W; thence to 39°13'22.50" N, 076°32'28.98" W; thence to 39°13'21.00" N, 076°33'12.00" W; and back to the beginning point.

- (2) *Waterway training area Bravo.* All waters of the Chesapeake Bay,

encompassed by a line connecting the following points beginning at 39°05'25.98" N, 076°20'20.04" W; thence to 39°04'40.02" N, 076°19'28.98" W; thence to 39°02'45.00" N, 076°22'09.00" W; thence to 39°03'30.00" N, 076°23'00.00" W; and back to the beginning point.

(3) *Waterway training area Charlie.* All waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°00'28.80" N, 076°22'43.80" W; thence to 38°01'18.00" N, 076°21'54.00" W; thence to 38°05'06.00" N, 076°27'43.20" W; thence to 38°04'40.20" N, 076°28'34.20" W; and back to the beginning point.

(4) *Waterway training area Delta.* All waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°32'31.14" N, 077°15'29.82" W; thence to 38°32'48.18" N, 077°15'54.24" W; thence to 38°33'34.56" N, 077°15'07.20" W; thence to 38°33'15.06" N, 077°14'39.54" W; and back to the beginning point.

(5) These coordinates are based on Datum NAD 83.

(b) *Definitions.* As used in this section---

*Captain of the Port (COTP)* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

*Designated representative* means a Coast Guard commissioned, warrant, or petty officer designated by or assisting the COTP in the enforcement of the safety zones.

*Training participant* means a person or vessel authorized by the COTP as participating in the training event or otherwise designated by the COTP or the COTP's designated representative as having a function tied to the training event.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zones described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) Except for training participants, all vessels underway within this safety zone at the time it is activated are to depart the zone. To seek permission to enter, contact the COTP or the COTP's designated representative by telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(d) *Enforcement.* The safety zones created by this section will be enforced only upon issuance of a Broadcast Notice to Mariners (BNM) by the COTP or the COTP's representative, as well as on-scene notice or other appropriate means in accordance with § 165.7.

Dated: November 22, 2019

Joseph B. Loring,  
Captain, U.S. Coast Guard  
Captain of the Port Maryland-National Capital Region.  
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